

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JAMES SIMPSON,

Petitioner,

Case Number: 2:09-CV-11998

v.

HON. GEORGE CARAM STEEH

BLAINE LAFLER,

Respondent.

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**OPINION AND ORDER TRANSFERRING  
SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS  
TO UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Petitioner James Simpson, a state prisoner currently incarcerated at the Carson City Correctional Facility in Carson City, Michigan, has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his convictions for second-degree murder, assault with intent to commit murder, and felony firearm. Petitioner previously has filed a habeas corpus petition challenging these convictions. The Court finds that the pending petition constitutes a successive petition over which the Court lacks jurisdiction. Therefore, the Court transfers the matter to the Court of Appeals so that Petitioner may seek permission to file a successive petition.

On August 13, 2001, Petitioner filed a habeas corpus petition in this district, challenging the same convictions challenged in the pending petition. That matter was assigned to the Honorable David M. Lawson. The District Court dismissed the petition with prejudice because the petition was time-barred. *See Simpson v. Howes*, No. 01-cv-10307 (E.D. Mich. June 10, 2002) (Lawson, J.). The Sixth Circuit Court of Appeals has held that when a habeas corpus

petition is dismissed based on a procedural bar, such a dismissal is a dismissal “on the merits.”

*In re Cook*, 215 F. 3d 606, 607 (6th Cir. 2000). *Accord Villanueva v. United States*, 346 F.3d 55, 61 (2d Cir. 2003) (holding that a dismissal of a suit as untimely is a dismissal on the merits).

Therefore, Petitioner’s prior habeas petition, which was dismissed as untimely, was a dismissal on the merits.

Before a prisoner may file a habeas petition challenging a conviction already challenged in a prior habeas petition, the prisoner must “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Petitioner has not obtained from the Court of Appeals for the Sixth Circuit authorization to file a second or successive petition in this Court. The Sixth Circuit has held that “when a second or successive petition for habeas corpus relief or § 2255 motion is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631.” *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

Accordingly, **IT IS ORDERED** that the petition for a writ of habeas corpus be **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit.

Dated: June 4, 2009

S/George Caram Steeh

GEORGE CARAM STEEH

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on  
June 4, 2009, by electronic and/or ordinary mail.

S/Josephine Chaffee

Deputy Clerk